

111TH CONGRESS
1ST SESSION

S. 2883

To amend the Internal Revenue Code of 1986 to provide for the distribution of remaining balances in flexible spending arrangements upon termination from employment.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2009

Mr. JOHANNIS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the distribution of remaining balances in flexible spending arrangements upon termination from employment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DISTRIBUTION OF REMAINING BALANCES IN**
4 **FLEXIBLE SPENDING ARRANGEMENTS UPON**
5 **TERMINATION FROM EMPLOYMENT.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-
7 enue Code of 1986 is amended by redesignating sub-
8 sections (i) and (j) as subsections (j) and (k), respectively,

1 and by inserting after subsection (h) the following new
 2 subsection:

3 “(i) DISTRIBUTION OF REMAINING BALANCES IN
 4 FLEXIBLE SPENDING ARRANGEMENTS UPON TERMI-
 5 NATION FROM EMPLOYMENT.—

6 “(1) IN GENERAL.—For purposes of this title,
 7 a plan or other arrangement shall not fail to be
 8 treated as a health flexible spending arrangement or
 9 a dependent care flexible spending arrangement sole-
 10 ly because under the plan or arrangement a partici-
 11 pant is permitted access to any unused balance in
 12 the participant’s accounts under such plan or ar-
 13 rangement in the manner provided under paragraph
 14 (2).

15 “(2) DISTRIBUTION UPON TERMINATION.—

16 “(A) IN GENERAL.—A plan or arrange-
 17 ment shall permit a participant (or any des-
 18 ignated heir of the participant) to receive a
 19 cash payment equal to the aggregate unused ac-
 20 count balances in the plan or arrangement as of
 21 the date the individual is separated (including
 22 by death or disability) from employment with
 23 the employer maintaining the plan or arrange-
 24 ment.

1 “(B) INCLUSION IN INCOME.—Any pay-
 2 ment under subparagraph (A) shall be includ-
 3 ible in gross income for the taxable year in
 4 which such payment is distributed to the em-
 5 ployee.

6 “(3) TERMS RELATING TO FLEXIBLE SPENDING
 7 ARRANGEMENTS.—For purposes of this section—

8 “(A) FLEXIBLE SPENDING ARRANGE-
 9 MENTS.—A flexible spending arrangement is a
 10 benefit program which provides employees with
 11 coverage under which specified incurred ex-
 12 penses may be reimbursed (subject to reim-
 13 bursement maximums and other reasonable
 14 conditions).

15 “(B) HEALTH AND DEPENDENT CARE AR-
 16 RANGEMENTS.—The terms ‘health flexible
 17 spending arrangement’ and ‘dependent care
 18 flexible spending arrangement’ means any flexi-
 19 ble spending arrangement (or portion thereof)
 20 which provides payments for expenses incurred
 21 for medical care (as defined in section 213(d))
 22 or dependent care (within the meaning of sec-
 23 tion 129), respectively.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) The heading for section 125 of the Internal
2 Revenue Code of 1986 is amended by inserting
3 “**AND FLEXIBLE SPENDING ARRANGEMENTS**”
4 after “**PLANS**”.

5 (2) The item relating to section 125 in the table
6 of sections for part III of subchapter B of chapter
7 1 of such Code is amended by inserting “and flexible
8 spending arrangements” after “plans”.

9 (c) **EFFECTIVE DATE.**—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this Act.

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